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GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,
16 Plaintiffs,
17 v.
18 GOOGLE INC.,
19 Defendant.

Case No. 3:10-cv-03561 WHA

**DECLARATION OF SUSAN A. KIM IN
SUPPORT OF ORACLE'S
ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF ORACLE'S MOTION IN
LIMINE #6 RE: RULE 706 EXPERT,
PROFESSOR JAMES KEARL**

Dept. Courtroom 8, 19th Fl.
21 Judge: Hon. William Alsup

1 I, SUSAN A. KIM, declare as follows:

2 1. I am an attorney employed by Google Inc. (“Google”), where I have served as
 3 senior litigation counsel for the last four years. My job responsibilities include, but are not
 4 limited to, supervising our outside counsel in connection with litigation matters (such as this one),
 5 as well as familiarizing myself with the areas of Google’s businesses and documentation
 6 concerning those businesses as they related to litigation matters under my supervision. I submit
 7 this declaration in support of Oracle’s Administrative Motion to File Under Seal Portions of
 8 Oracle’s Motion in Limine # 6 Regarding Rule 706 Expert, Professor James Kearl (“Oracle’s
 9 Motion in Limine #6”). ECF No. 1582. I have knowledge of the facts set forth herein, and if
 10 called upon as a witness, I could testify to them competently under oath.

11 2. I have reviewed Oracle’s Motion in Limine #6 and Exhibits 1 and 2 to the
 12 Declaration of Andrew D. Silverman. Exhibit 1 is Dr. Kearl’s March 18, 2016 Report (“Exhibit
 13 1”) and Exhibit 2 is excerpts from the March 23, 2016 deposition of Dr. Kearl (“Exhibit 2”).

14 A. The following portions of Oracle’s Motion in Limine #6 and Exhibits 1 and
 15 2 contain Google’s extremely confidential and commercially sensitive Android-related financial
 16 information:

17 • **Oracle’s Motion in Limine # 6**

- 18 ○ p. 1, line 5: the dollar amount at the end of the sentence reflecting
- 19 revenue and financial information which are not public.
- 20 ○ p. 1, line 7: the dollar amount after the word “number” reflecting
- 21 revenue and financial information which are not public.
- 22 ○ p. 1, lines 17-19: the dollar amounts in first two bulleted paragraphs
- 23 reflecting revenue and financial information which are not public.
- 24 ○ p. 1, line 25: the first dollar amount range within the parentheses
- 25 reflecting revenue and financial information which are not public.
- 26 ○ p. 1, footnotes 1 and 2: all dollar amounts stated in both footnotes
- 27 reflecting revenue and financial information which are not public.
- 28

- p. 2, line 6: the dollar amount after the word “Kearl’s” reflecting revenue and financial information which are not public.
- p. 4, lines 8-14, 20-24: all dollar amounts reflecting revenue and financial information which are not public.
- p. 5, lines 1-10 and footnote 7: all dollar amounts which reflect revenue and financial information which are not public.
- **Exhibit 1: Dr. Kearl’s March 18, 2016 Report**
 - p. 6, ¶ 9: revenue and financial information which are not public.
 - p. 6, ¶ 11: revenue and financial information which are not public.
 - p. 36, ¶ 70: revenue and financial information which are not public.
 - p. 38, ¶ 73, footnote 108: revenue and financial information which are not public.
 - p. 52, ¶ 103: revenue and financial information which are not public.
 - p. 16, footnote 45: revenue and financial information which are not public.
 - p. 22, footnote 66: revenue and financial information which are not public.
 - p. 39 ¶ 77: revenue and financial information which are not public.
 - p. 40 ¶ 78: revenue and financial information which are not public.
 - p. 51 ¶¶ 102, 103: revenue and financial information which are not public.
 - Ex. 1: revenue and financial information which are not public contained in columns 2013, 2014, and 2015, totals for 2011-2014 and totals for 2011-2015.
 - Ex. 2: revenue and financial information which are not public contained in columns for Malackowski (2008-2015), Leonard (2008-2015) and “Difference” column for Operations, COS, Android General and

Administrative, and Incremental Search and Advertising Expenses rows.

- Ex. 4a.1: revenue and financial information which are not public contained in columns 2013, 2014, 2015, and total for all Net Loss Profit section rows.
- Ex. 4a.2: revenue and financial information which are not public contained in columns 2013, 2014, 2015, and total for all Net Loss Profit section rows.
- Ex. 4b: revenue and financial information which are not public for Google Play Revenues from the U.S., Advertising Revenue by Android Devices in the U.S., Worldwide Advertising Revenues by Type, Percent of U.S. Android Revenue from Total Revenues.
- Ex. 4c.1: revenue and financial information which are not public contained in columns 2013-2015 & Total.
- Ex. 4c.2: revenue and financial information which are not public contained in columns 2013-2015 & Total.
- Ex. 4c.3: revenue and financial information which are not public contained in columns 2013-2015 in Play Revenue Loss rows.
- Ex. 4d.1: revenue and financial information which are not public contained in columns 2013-2015.
- Ex. 4d.2: revenue and financial information which are not public contained in columns 2013-2015.
- Ex. 4d.3: revenue and financial information which are not public contained in columns 2009-2015.
- Ex. 4e.1: revenue and financial information which are not public contained in columns 2013-2015 & Total.
- Ex. 4e.2: revenue and financial information which are not public contained in columns 2013-2015 & Total.

- Ex. 4e.3: revenue and financial information which are not public contained in columns 2013-2015.
- Ex. 5a: revenue and financial information which are not public contained in columns 2013-2015.
- Ex. 5b: revenue and financial information which are not public contained in columns 2013-2015.
- Ex. 7: revenue and financial information which are not public contained in columns for Malackowski and Leonard.

- **Exhibit 2: Excerpts from the March 23, 2016 Deposition of Dr. Kearl**

- p. 181:16 & 17: revenue and financial information which are not public.
- p. 182: 8: revenue and financial information which are not public.
- p. 184:14: revenue and financial information which are not public.

Google does not publicly allocate revenue or profits to Android separate and apart from Google's general business. Accordingly, Google considers the non-public financial data identified above to be highly sensitive, and public disclosure of that information could have significant negative effects on Google's business. Google only seeks to seal the specific numbers and percentages contained in the above listed passages.

B. In addition, the following portions Exhibit 1 contain sensitive information related to Google's agreements with third parties.

- **Oracle's Motion in Limine # 6**

- p. 4: lines 23: second dollar amount which reflects revenue and agreement terms which are not public.
- p. 5, lines 9-10: all dollar amounts which reflect revenue and agreement terms which are not public.

- **Exhibit 1: Dr. Kearl's March 18, 2016 Report**

- p. 17 ¶¶ 30-32: revenue and agreement terms which are not public.

- p. 18 ¶¶ 32, 33, footnote 52: revenue and financial information which are not public.
- p. 38 ¶ 75: revenue and agreement terms which are not public.
- p. 39 ¶ 77: revenue and agreement terms which are not public.
- Ex. 4a.1: revenue and agreement terms which are not public contained in rows for Net Loss Profit.
- Ex. 4a.2: revenue and agreement terms which are not public contained in rows Net Loss Profit.
- Ex. 4c.1: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4c.2: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4c.3: revenue and agreement terms which are not public contained in all rows for Ad Revenue Diversion Ratio and Ad Revenue Loss.
- Ex. 4c.4: revenue and agreement terms which are not public contained in rows for Diversion Ratio (Android to iOS).
- Ex. 4d.1: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4d.2: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4d.3: revenue and agreement terms which are not public contained in rows for Ad Revenue Diversion Ratio > Dr. Leonard's Base Model.
- Ex. 4d.4: revenue and agreement terms which are not public contained in rows for Diversion Ratio (Android to iOS).

- Ex. 4e.1: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4e.2: revenue and agreement terms which are not public contained in rows for Diversion Ratio, iPhone Offset & Net Loss of Profit, Footnote 6.
- Ex. 4e.3: revenue and agreement terms which are not public contained in rows for Ad Revenue Diversion Ratio and Ad Revenue Loss.
- Ex. 4e.4: revenue and financial information which are not public contained in rows for Diversion Ratio (Android to iOS).
- Ex. 5a: revenue and agreement terms which are not public contained in rows for Redact iPhone Recapture Adjustment and Profit.
- Ex. 5b: revenue and agreement terms which are not public contained in rows for Redact Diversion Ratio, iPhone Recapture Adjustment.
- **Exhibit 2: Excerpts from the March 23, 2016 Deposition of Dr. Kearl**
 - P. 184:14: revenue and agreement terms which are not public.

The information relating to third-parties and third party agreements that is quoted, discussed, and/or summarized in the passages above is subject to stringent confidentiality requirements contained within the relevant agreements. Indeed, Google places strict limits on who has access to the terms of these agreements to ensure confidentiality is retained. Also, Google does not disclose this information to the public. Public disclosure of this information could severely and adversely impact Google's ability to negotiate, among other things, similar terms with other third parties in connection with similar agreements now or in the future. Google only seeks to seal the specific numbers and terms in the above listed portions.

3. The selected portions of Oracle's Motion in Limine #6 and Exhibits 1 and 2 should therefore be filed under seal.

1
2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct to the best of my knowledge.
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5 Executed this 4th day of April, 2016 at San Francisco, California.
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8 By: 
9 SUSAN A. KIM
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